

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

In re:
KAREN M. THOMAS,
Debtor.
Chapter 13
Case No. 16-50612

In re:
GARY L. BROOKS, JR. and
MARY M. GILLESPIE-BROOKS,
Debtors.
Chapter 13
Case No. 16-50396

KAREN M. THOMAS,
GARY L. BROOKS, JR., and
MARY M. GILLESPIE-BROOKS,
Plaintiffs,
v.
MIDLAND FUNDING, LLC, and
MIDLAND CREDIT MANAGEMENT, INC.,
Defendants.
Adv. P. No. 17-05010

O R D E R

Before the Court is the defendants' motion to dismiss the complaint for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, applicable here under Federal Rule of Bankruptcy Procedure 7012(b). This Court held a hearing on defendants' motion on September 27, 2017. Counsel for both parties presented oral argument in support of their respective positions. Following the hearing, this Court took the matter under advisement.

For the reasons set forth in the Court's contemporaneous Memorandum Decision, which is incorporated herein by reference, the Court will deny the defendants' motion in part, and grant in part.

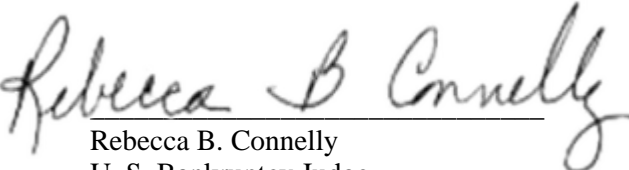
Accordingly, it is

O R D E R E D

That defendants' motion to dismiss, ECF Doc. No. 4, is **DENIED in part and GRANTED in part**. The motion to dismiss is denied as to Count I. It is granted without prejudice as to Count II, Count II of plaintiffs' complaint is dismissed without prejudice, and plaintiffs are granted leave to amend Count II of the complaint in order to correct the deficiencies noted in the Memorandum Decision. The plaintiffs shall file and serve any amended complaint no later than **December 21, 2017**. Defendants shall have until **January 4, 2018**, to file and serve any motion or responsive pleading to the amended complaint. If an amended complaint is not filed by December 21, 2017, defendants shall have until **January 4, 2018**, to respond to Count I.

Copies of this order are directed to be sent to plaintiffs' counsel, Timothy E. Cupp, Esq., Shelley Cupp Schulte, P.C., P.O. Box 589, Harrisonburg, VA 22803; Thomas D. Domonoske, Consumer Litigation Associates, P.C., 763 J. Clyde Morris Blvd, Suite 1A, Newport News, VA 23601; Beth C. Driver, Esq., Hoover Penrod, PLC, 342 S. Main Street, Harrisonburg, VA 22801; Hannah White Hutman, Hoover Penrod, PLC, 342 S. Main Street, Harrisonburg, VA 22801; Grant D. Penrod, Hoover Penrod, PLC, 342 S. Main Street, Harrisonburg, VA 22801; and to defendants' counsel, James K. Donaldson, Spotts Fain, P.C., 411 E. Franklin St., Ste. 600, Richmond, VA 23219.

Entered: 11/30/2017


Rebecca B. Connelly
U. S. Bankruptcy Judge